

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

PHYLLIS J. KENNEDY,	:	
Plaintiff,	:	
vs.	:	Case No. 3:15cv00059
	:	District Judge Thomas M. Rose
NANCY A. BERRYHILL,	:	Chief Magistrate Judge Sharon L. Ovington
Commissioner of the Social	:	
Security Administration,	:	
Defendant.	:	

DECISION AND ENTRY

This case is before the Court upon the Motion For Allowance Of Attorney Fees filed by Plaintiff's attorney. (Doc. #19). The Commissioner has neither responded to nor opposed this Motion.

The Motion seeks an award of attorney fees under 42 U.S.C. § 406(b)(1) in the total amount of \$35,679.00. In the absence of opposition by the Commissioner, the Motion and supporting Exhibits establish that an award of attorney fees is reasonable and warranted under 42 U.S.C. § 406(b)(1) in the amount the Motion seeks.

In addition, the Court previously awarded \$6,490.49 in attorney fees to Plaintiff's counsel under the Equal Access to Justice Act (EAJA). (Doc. #18). The EAJA award, however, was subject to offset in the amount of any debt Plaintiff owed the Government. *See id.* The current record does not indicate whether or not Plaintiff's counsel actually

received any of the EAJA award because of the potential offset. Counsel, moreover, may not recover attorney fees under both the EAJA and 42 U.S.C. § 406(b) for the same work. Plaintiff's counsel must therefore return to Plaintiff the amount of EAJA fees, if any, she has actually received. *See Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002).

Accordingly, the Court hereby **ORDERS** that:

1. The Motion For Allowance Of Attorney Fees filed by Plaintiff's attorney (Doc. #19) is GRANTED;
2. The Commissioner shall pay Plaintiff's attorney fees pursuant to 42 U.S.C. § 406(b)(1) in the amount of \$35,679.00;
3. Plaintiff's counsel shall refund to Plaintiff the amount of attorney fees, if any, she has actually received under the Equal Access To Justice Act; and
4. The case remains terminated on the docket of this Court.

November 13, 2017

*s/Thomas M. Rose

Thomas M. Rose
United States District Judge